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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 VALVE CORPORATION,

9 Plaintiff,

10 v.

11 ROTHSCHILD ET AL.,

12 Defendant.

CASE NO. 23-cv-1016

ORDER FOR SUPPLEMENTAL
BRIEFING

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14 The Court raises on its own accord this issue arising from Defendants' Motion
15 to Dismiss. Dkt. No. 40.

16 Both parties acknowledge that the Global Settlement And Licensee
17 Agreement ("GSLA") contains a choice of law provision governing this dispute. Dkt.
18 Nos. 26 at 5-6; 29 at 12. Section 11.1 of the GSLA states that "[t]he construction,
19 validity and performance of the Agreement shall be governed in all respects
20 (without regards to conflict of law provisions) by the law of the State of Texas . . ."
21 Dkt. No. 38-1.

22 Defendants move to dismiss Valve's complaint for lack of subject matter
23 jurisdiction and for failure to state a claim. Neither party, however, addresses "the

1 law of the State of Texas” in the context of the motion, which prompts the Court’s
2 questions below:

3 First, state law ordinarily applies to breach of contract claims, like the one
4 Valve asserts here. *See Kaufman v. Mut. Life Ins. Co. of New York*, 108 F.3d 1385
5 (9th Cir. 1997) (applying state law to breach of contract claims). But rather than
6 addressing Texas law per the GLSA, the parties cite and argue Washington law
7 only. The Court’s first question is which state’s law applies to Valve’s breach of
8 contract claim under the GLSA—Washington or Texas?

9 Second, federal privilege law, not state privilege law, ordinarily applies when
10 a plaintiff alleges federal and state-law claims when the same evidence relates to
11 both claims. *Wilcox v. Arpaio*, 753 F.3d 872, 876 (9th Cir. 2014). Defendants contend
12 the litigation privilege precludes Valve’s claims against Meyler Legal and Mr.
13 Meyler, but the parties analyze the privilege issue under Washington law only. This
14 leads to the Court’s second question: in light of the GLSA’s choice-of-law provision,
15 which litigation privilege law applies (i.e., federal, Washington, or Texas) when the
16 Court possesses federal question and supplemental jurisdiction over the dispute?

17 The parties are ORDERED to meet and confer about the questions raised
18 above to determine whether they can reach any common answers.

19 The parties are further ORDERED to provide supplemental briefing, limited
20 to 2,100 words, addressing any disagreements about the controlling law and
21 supplementing their prior briefing, if necessary, in light of the Court’s questions.
22 Alternatively, either party may indicate that they are waiving or ceding an
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1 argument regarding Defendants' motion to dismiss in their response to this Order.

2 The parties' responses are due within 14 days of entry of this Order.

3 It is so ORDERED.

4 Dated this 24th day of May, 2024.

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Jamal N. Whitehead
7 United States District Judge
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